IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8636 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NOORMOHMMED H. BATLI PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8636 of 2002

MR BIPIN P JASANI for Petitioner No. 1

Ms,Manisha Shah AGP for Respondent No. 1

MR Dave for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 29/10/2002

ORAL JUDGEMENT

The short facts of the case are that the

petitioner applied for opening a school at Veraval. The case of the petitioner is that the school which is proposed to be opened is at a place where in comparison to the strength of students sufficient facilities for education are not available. It is also the case of the petitioner that they belong to minority community and for the purpose of studies of girls of the said minority community the petitioner trust has decided to open a school. The petitioner is not claiming any grant for the purpose of said school. The petitioner applied for granting registration to the respondent Board, however, on 9.5.02 the respondent Board declined the request for opening new school on the ground that it is not financially sound and the requisite number of students are not available and it is likely to create unhealthy competition and that the building is not proper and the need for the school is not established.

2. The petitioner carried the matter in appeal before the State Govt and ultimately the State Govt passed the order on 1.7.02 whereby the State Govt considered all the grounds and found that there is no requisite building for the school and the opening of school is likely to create unhealthy competition and therefore on those two grounds the appeal is dismissed. Under the circumstances, the present petition is preferred.

3. Mr.Jasani appearing on behalf of the petitioner contended that the petitioner at no point of time was given any opportunity to meet with the report of the Dist.Education officer. He also submitted that all the schools and more particularly the school at an adjacent distance, namely, Salma Girls School has given NOC for opening the school. He submitted that the existing strength of the said school is not in a position to meet with the requirement and excess students are admitted and therefore it may be presumed that the need is established. Mr.Jasani also submitted that so far as the schools for minority community are concerned it is not necessary that the strength should be of prescribed number of 23 or 30 students as the case may be and he submitted that such requirement is only for the purpose of schools which claim grant and whereas the petitioner is not claiming any grant and the burden of expenses for running the school is to be shouldered by the petitioner trust and therefore he submitted that the requirement of area which is alleged to have been mentioned is not the proper ground and therefore he submitted that the ground which is mentioned by the appellate authority in the order is not correct and hence the matter deserves to be

remanded to the State Govt.

4. On behalf of respondent Board Mr.Dave supported the order passed by the respondent Board and Ms.Manisha Shah, Ld.AGP has also supported the order passed by the State Govt. Mr.Dave submitted that the petitioner is not a school of linguistic minority and even if the religious minority, then such status should be conferred. In any case, the requirement for the purpose of granting permission for fresh school is the same. He submitted that the Dist.Primary Education Officer had submitted the report and the said report was considered in the presence of the petitioner and therefore it can be said that the report is disclosed to the petitioner. Mr.Dave submitted that as per the report of the Board no need is established and at a zero Kilometer distance one school, namely, Salma Girls School is very much there and therefore it can not be said that need for opening new school is established and the Board has found that it is likely to create unhealthy competition and therefore the justification for rejecting the request is legal and valid.

5. Having considered the above, I am of the view that so far as unhealthy competition is concerned, primafacie, the ground appears to be not supported by the material in as much as the school which is likely to be affected is Salma Girls School and the said school has given No Objection Certificate (NOC). Even the statement produced at annexure I shows that number of students admitted in 8th standard are 125, in IXth standard 95 and in Xth standard 64 and therefore when the very school has given NOC it can hardly be said that opening of new school would result into unhealthy competition. However, mere issuance of NOC can not be a sole ground for the purpose of establishing the need and it will be for the authority to decide all the circumstances. Primafacie, it appears that the ground which is recorded by the State Govt of creating unhealthy competition is contrary to the record.

6. AS regards, requisite building is concerned, Mr.Jasani submitted that the building is meeting with the requirement and the report of the Dist.Education Officer is also not disclosed to the petitioner. He submitted that as per Regulation 9(13)(2) the requirement is satisfied. In my view, this court can not give any final opinion on the said aspect but considering the facts and circumstances of the case, it would be more better if the State Govt reconsiders the matter on the said aspect

also.

7. In view of the above discussion, the order dated 1.7.02 passed by the State Govt at annexure "A" is quashed with a direction to reconsider the matter keeping in view the observations made by this court earlier and the State Govt shall decide the appeal afresh after giving opportunity of hearing to the petitioner as well as to the respondent Board and such decision shall be rendered within a period of two months from the date of receipt of writ of this court.

8. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs. DS permitted.

29.10.02 (JAYANT PATEL,J)